PART XV.

RULES UNDER SECTION 320* OF THE CIVIL PROCEDURE CODE XVI OF 1882, AS AMENDED BY SECTION 30 OF VII OF 1888.

24th May 1880.

In supersession of so much of Government Notification No. 7320 of 16th December 1878 (published at page 839 of the *Bombay Government Gazette* for 1878) as has not been already superseded by Government Notification No. 499 of 24th January 1880 (published at page 96 of the *Bombay Government Gazette* of 1880), and in exercise of the power conferred by section 320 of the Code of Civil Procedure, the Governor of Bombay in Council is pleased, with the previous sanction of the Governor General in Council, to declare:—

1.—That in the Districts of Poona, Sholápur, Ahmednagar and Sátára the execution of decrees ordering the sale of any immoveable property belonging to a person who is an agriculturist within the meaning of the Deccan Agriculturists' Relief Act, 1879, which has been specially mortgaged for the repayment of the debt to which any such decree relates, shall be transferred to the Collector: Provided that nothing herein contained, shall be deemed to affect the execution of decrees already legally transferred to the Collector under the Notification hereby superseded. (No. 3600, *B. G. G.*, 1880, Pt. I., p. 519.)

2.—That in the Districts of Poona, Sholápur, Ahmednagar and Sátára decrees for money passed prior to the first of November 1879 in execution of which a court has ordered the sale of any immoveable property belonging to any person who is an agriculturist within the meaning of the Deccan Agriculturists' Relief Act, 1879 (as amended by Act XXIII of 1881), shall be transferred for execution to the Collector. (No. 4520, *B. G. G.*, 1882, Pt. I., p. 557.)

3.—that in the Districts of Násik, Khándesh, Kaládgi, Ahmedabad, Kaira, Surat and Broach the execution of decrees shall, in the following cases, be transferred to the Collector, (*viz.*):—

(1) Decrees for money in execution of which a Court has ordered the sale of immoveable property belonging to any person who earns his livelihood, either wholly or principally by agriculture.

(2) Decrees ordering the sale of immoveable property belonging to any such person in pursuance of a contract specifically affecting the same.

4.—that in the Districts of Ahmedabad, Kaira and Broach the execution of decrees in cases in which a Civil Court has ordered the sale of any immoveable property belonging to a Tálukdár, Thákur, Jághírdár or Kasbati, and of decrees ordering the sale of any such property, shall be transferred to the Collector. (No. 1771, *B. G. G.*, 1881, Pt. I., p. 140.)

* The Notification of Government made under section 320 is not applicable to the Courts of Jághirdárs who have power under Regulation XIII of 1830 to execute their own decrees. (*Vide* notification at page 557, *Bombay Government Gazette, 1882.*)

24th January 1880.

In all cases in which, under the provisions of paragraph 1 of section 320 of the Code of Civil Procedure, the execution of certain decrees has been, or may hereafter be, transferred to the Collector, the Governor in Council is pleased, in exercise of the powers conferred by paragraph 2 of the aforesaid section, and in supersession of the Rules published under date the 16th December 1878, to prescribe the following rules for the transmission of such decrees from the Court to the Collector, and for regulating the procedure of the Collector and his subordinates in executing the same, and for retransmitting the said decrees from the Collector to the Court, namely :—

(No. 499, *B.G. G.*, 1880, Pt. I., pp. 96 and 99.)

1. If the Court shall be satisfied that the decree is one to which this notification applies, it shall cause a copy thereof to be forwarded to the Collector by post, or in such other manner as shall be most convenient.

2. Along with the said copy the Court shall send—

(*a*) A copy of the judgment, if any, of the Court which passed the decree;

(*b*) If the decree is that of an Appellate Court, a copy of the judgment of the Court which tried the suit originally, and, when there has been a special or second appeal, of the judgment of the first Appellate Court;

(*c*) A statement showing the extent, if any, to which the decree has been already executed, and clearly setting forth what portion of the decree still remains to be satisfied;

(*d*) A copy of the application for execution of the decree and of the order, if any, made thereon for sale.

3. The aforesaid documents shall be prepared and transmitted to the Collector, free of all cost to the parties; the copies, &c., being prepared by the Court's establishment.

4. On receipt of the decree and of the other documents mentioned in Rule 2, the Collector may either proceed to execute it himself, or may refer it for execution, subject to his supervision and control, to any of his subordinates not lower in rank than a Mahálkari.

5. The Collector, or the officer to whom the Collector so refers the decree shall, without delay, appoint a day for hearing any representations which the parties or any of them may desire to make, as to the manner in which the decree should be executed, and shall cause a written notice to be served on each of the parties to the decree of the day so fixed, and shall also require the judgment-debtor to produce all title-deeds and other documents affecting the property in question which may be in his possession or power; and shall, after such enquiry as he considers necessary, proceed according to the methods prescribed by section 321 to 325 C. of the Civil Procedure Code, as may be appropriate to the nature of the case.

6. The Collector or other officer aforesaid may, from time to time, by similar written notices, require the attendance of the parties to the decree, or any of them, for the purpose of ascertaining their wishes or of obtaining any information which he may consider necessary to enable him to provide satisfactorily for the execution of the decree; and if any party does not attend, in pursuance of any such notice, the Collector or other officer aforesaid shall decide the matter in his absence, and he shall not afterwards be entitled to be heard with respect thereto.

7. Every such notice, and every notice which the Collector shall issue under section 324 of the Code of Civil Procedure to the judgment-debtor or his representative, may be served in the manner prescribed by section 191 of the Bombay Land Revenue Code or by forwarding the same to the Court to be served upon the pleader, if any, of the party to whom such notice is addressed. Every other notice issued under these rules shall be served in the manner prescribed in section 191 of the Bombay Land Revenue Code. (Notn. 3132, B. G. G., 1883, Pt. I., p. 358.)

8. All orders which the Collector or other officer aforesaid shall pass in respect of the execution of the decree, or of the management or sale of the immoveable* property of the judgment-debtor, shall be made in writing, and shall be dated and signed by him; and a diary of his proceedings shall be kept in the language of the district, in the Form B. at page 148 of the Circulars of the High Court of Bombay.

9. Previous to proceeding to sell any property, the Collector or other officer aforesaid shall, unless he has already proceeded under section 322A. or 322C., publish a notice in the language of the district calling upon all persons having rights in, or charges or claims on, the said property, or any part thereof, to submit on or before a date which shall be named in such notice, and which shall not be less than six weeks after the date of such notice, a statement of the right, charge or interest claimed, and to produce the documents, if any, on which such claims are based.

Such notice shall be published in the manner prescribed for the notice to be issued by the Collector under section 322A. of the Code of Civil Procedure. (Notn. 3132, B. G. G., 1883, Pt. I., p. 358.)

10. If, in the opinion of the Collector or other officer aforesaid, any statement so produced is not sufficiently precise or clear; or if it shall appear to the Collector or such other officer that all the documents in the claimant's possession or power relating

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* RESOLUTION.—The sale of what is in the mofussil called the equity of redemption of mortgaged property, is really a sale of the property burdened with a certain debt. The latter circumstance does not make it, it seems to the Governor in Council, less a sale of the property, and the rules already issued provide for execution of decrees ordering a sale of immoveable property by the Collectors. (G. R. No. 1668, J. D., 25th March 1890.)

to the property to be sold have not been produced, he may refuse to receive such statement, and may give or may not give, as he deems fit, time for the production of a fresh statement.

The Collector or other officer aforesaid shall peruse the documents of title which any such claimant produces ; but such documents shall not, without a special order, the reasons for which must be recorded, be handed for perusal to any other person than the Collector or other officer aforesaid, and his clerk, reader or interpreter: and they shall, after such perusal, be restored to the persons who have produced them with an endorsement signed by the Collector or other officer aforesaid on each of the date on which and the purpose for which they were presented and of the date of return and of the person to whom they are returned.

(Notn. 3132, *B.G.G.*, 1883, Pt. I., p. 358; (Notn. 6437, *B.G.G.*, 1883, p. 695.)

11. Every sale of property shall be held before the Collector or other officer aforesaid or before any Revenue officer not lower in rank than a Mahálkari's first Kárkún specially nominated by the Collector or other officer aforesaid in this behalf.

Except as is otherwise provided by the Code of Civil Procedure, every such sale shall be proclaimed* and held in the manner prescribed by the rules for the time being in force relating to the sale of immoveable property in realization of arrears of land revenue.

Every proclamation of any such sale shall contain, in addition to the particulars required by the said rules :—

(*a*) A list of all claims of which statements have been drawn up under section 322B. or section 322C., or have been duly submitted and accepted by the Collector or other officer aforesaid under No. 10 of these Rules, and which shall appear to the Collector or such other officer to be *primâ facie* honest and reasonable.

(*b*) A caution that no guarantee is given either of the judgment-debtor's title or of the validity of any of the rights, charges or interest claimed by third parties.

12. The Collector or other officer aforesaid shall retain the title-deeds and other documents produced by the judgment-debtor under Rule 5 ; and, if the whole of the property to which they relate is sold, shall hand them over to the purchaser.

(Notn. 3280, *B.G.G.*, 1885, Pt. I, p. 631; see also Notn. No. 2890, *B. G. G.*, 1890, Pt. I., p. 510.)

12A. No holder of a decree in execution of which property is sold shall, without the express permission of the Collector or other officer aforesaid, bid for or purchase the property.

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* The form of proclamation is given in the Appendix to this Part.

13. When any sale has been finally completed, the Collector or other officer aforesaid shall give to the purchaser a certificate of sale, as nearly as may be, in the Form No. 150 of Schedule IV. of the Code of Civil Procedure.

14. When the property sold is in the occupancy of the judgment-debtor, or of any other person, and a certificate in respect thereof has been granted under the last preceding Rule, the Collector or other officer aforesaid shall, on application by the purchaser, order delivery to be made by putting the purchaser or any person whom he may appoint to receive delivery on his behalf in possession of the property; by proclaiming to the occupant by beat of drum, or in such other manner as may be customary, at some convenient place, that the interest of the judgment-debtor has been transferred to the purchaser; and, if need be, by removing any person who refuses to vacate the same.

15. When execution of the decree has been, as far as possible, completed, and the balance, if any, of all monies which have come to his hands, disposed of in accordance with the provisions of section 324A. of the Code of Civil Procedure, the Collector shall re-transmit the papers received by him under Rules 1 and 2, together with the execution proceedings, to the Court by post, or in such other manner as shall be most convenient.

16. The following powers are conferrred on Collectors or such of their gazetted subordinates to whom a decree has or may hereafter be referred under Rule 4:— (Notn. No. 92, *B. G. G.*, 1890, Pt. I., pp. 38 and 39.)

(1) The power referred to in section 294 of the Code of Civil Procedure to grant express permission to the holder of a decree, in execution of which property is sold, to bid for or purchase the property: Provided that the Collector or other officer aforesaid, to whom an application for such permission may be made, shall not grant such permission unless the decree-holder—

(*a*) satisfies him that the application is made in good faith, and that the judgment-debtor is not a minor;

(*b*) undertakes that he will not himself or through any other person bid or purchase for a sum less than such amount as the Collector or other officer granting the permission, having regard to the fair market value of the interest to be sold, may determine, and that the permission shall be subject to this condition;

(*c*) agrees that if the decree-holder or any one on his behalf becomes the purchaser, the purchase-money shall be paid to the Collector or other officer executing the decree.

(2) The power referred to in paragraph 1 of Section 312, Civil Procedure Code, to pass

an order confirming a sale if no application to set the sale aside has been made within the time limited by law,* or if every application so made has been disallowed.

* *Viz.* 30 days from the date of the sale, Art. 166, XV, 1887.

17. If any application to set aside a sale be made within the time limited by law to the Collector or other officer aforesaid, he shall refer the applicant to the Civil Court.

The arrangement in Rules 16 and 17 is provisional pending a reconsideration of the whole subject of execution of decrees by Collectors. (G. R., J. D., No. 91, 8th January 1890.)

ADDITIONAL ORDERS, &c.

1. As the law stands, no fees for the service and execution of processes, issued by the Collector in the exercise of powers under section 320 of the Civil Procedure Code, are leviable. (G. R. 1619, J. D., of 11th March 1881.)

Rules for the guidance of Collectors in accepting or declining appointments as receivers under Section 504, Civil Procedure Code.

"1. Collectors shall only consent to act as Receivers under section 504 of the Civil Procedure Code in as many cases as they are from time to time of opinion they or, subject to their supervision, their subordinates can properly attend to, and shall exercise their discretion as to what cases they shall consent to act in. (Notn. No. 3913, *B. G. G.*, 1883, Pt. I., p. 386.)

"2. They should decline to act in any case in which previous to their appointment they have not been consulted by the District Court as to their willingness to act.

"3. They should decline to act in every case in which, after inquiry, they find—

(*a*) that the estate is of insignificant value; or

(*b*) that if they accept the office, no sufficient provision will remain for the support of the judgment-debtor and his family during the management; or

(*c*) that owing to the property being an undivided share, or for any such reason, the management will probably be attended with litigation or serious complications and difficulties of which it would be unreasonable to throw the burden upon the officers available for the management;

(*d*) that a more satisfactory method of dealing with the case would be for the Court to transfer execution of the decree under section 320 of the Civil Procedure Code, if that section is applicable; or

(*e*) that the case is one to which the provisions of section 326 of the Code ought to be applied and to which they propose to apply those provisions.

"4. They should accept the office as a rule when the judgment-debtor is a person of rank and position, or the descendant of such a person, and there is reasonable hope of the management of his attached estate conducing to his advantage and the judgment-creditor consents to a reasonable allowance being made out of the proceeds for the maintenance of such judgment-debtor and his family during the management if he has no other sufficient means of support."

APPENDIX.

FORM OF PROCLAMATION.

(Under Rule 11.)

Whereas the property of , hereinunder specified, has been attached on account of a decree obtained in original suit No. of 189 , in the Court of , at plaintiff, defendant, in virtue whereof a sum of was adjudged to be payable by the said to the plaintiff;

and whereas it is necessary to recover the said amount by sale of the said property together with all lawful charges and expenses resulting from the said attachment and sale:

Notice is hereby given that on the day of 189 at o'clock A.M., A.B., the Mámlatdár of (or other person appointed) will, at in Táluka in this District, sell by auction to the highest bidder and without reserve, the right, title and interest of the said in the property hereinunder specified, and every power of disposing of the same or any of them or of the profits arising therefrom which the said may now consistently with the law exercise for his own benefit.

Immoveable Property.

1	2	3	4	5	6	7	8	9
Lot Number.	Description of Lot, including local situation, supposed or estimated rent or annual value, and, if leased, for how long, on what terms, and to whom.	Survey Number, Municipal Number and other fiscal designation.	Government Revenue, including any Local Cess, any other known fiscal charge resting on the Lot.	Present occupant.	(Here enter any other particulars the Collector may see fit.)			Here enter the additional particulars required in Rule 11 (*a*).

N. B.—No guarantee is given of the title of the said interest claimed by third parties of the validity of any of the rights, charges of

Collector.

FORMS FOR THE USE OF COLLECTORS AND THEIR SUBORDINATES UNDER THE RULES PRESCRIBED IN GOVERNMENT NOTIFICATION NO. 499 OF 24TH JANUARY 1880, SANCTIONED IN GOVERNMENT RESOLUTION NO. 1767, DATED 16TH MARCH 1881, JUDICIAL DEPARTMENT.

1. Notice to be served on the parties to a decree under Rule 5 :—

In the Court of at

Civil Suit No. of 189

A. B.

against

C. D.

Claim Rs.

A. B. (or C. D.) resident of
in the
Táluka of the District.

Whereas the execution of the decree passed by the Court in the above suit on the day of 189 has been transferred by the Court to the Collector of *by whom the same has been referred to me

* This must be varied if the Collector himself executes the decree and issues the notice.

You are hereby informed that I have appointed day the day of 189 at o'clock of the noon for hearing in my office (or camp) at in the táluka of the district any representations which the parties, or any of them, may desire to make to me as to the manner in which the said decree should be executed.

†And you are hereby required to produce before me at the abovenamed time and place all title-deeds and other documents in your possession or power affecting the below-mentioned property which is ordered by the said decree to be sold or which the Court has ordered to be sold in execution of the said decree, *or otherwise as the case may be.*

† This provision is to be added only when the notice is to be served upon the judgment-debtor.

Details of property above referred to.

Dated this day of 189 .

(Signed)

Designation of Officer.

Seal (if the officer issuing the notice has an official seal).

2. Notice issuable to the parties to a decree at any time under Rule 6 :—

In the Court of at

Civil Suit No. of 189 .

A. B.

against

C. D

Claim Rs.

To

A. B. (C. D.) resident of
in the Táluka of the District.

Whereas the execution of the decree passed by the Court in the above suit on the day of 189 has been transferred by the Court to the Collector of by *whom the same has been referred to me,

* This must be varied if the Collector himself executes the decree and issues the notice.

You are hereby required to attend before me on day the day of 189 at o'clock of the noon at my office (or camp) at in the táluka of the district for the purpose of

If you to fail to attend at the abovenamed time and place in pursuance of this notice, the abovementioned matter will be decided upon in your absence, and you will not afterwards be entitled to be heard with respect thereto.

Dated this day of 189 .

(Signed)

Designation of Officer.

Seal (if the officer issuing the notice has an official seal.)

3. *Public notice to be issued under Rule 9 :—*

In the Court of at

Civil Suit No. of 189 .

A. B.

against

C. D.

Claim Rs.

The property specified in the schedule hereunto annexed having been attached in execution of the decree passed in the above suit, notice is hereby given to all persons having rights in or charges or claims on the said property in any part thereof, that they should on or before day the day of 189 , submit to the undersigned by whom the said decree is being executed, at his office (or camp) at in the táluka of the district a statement of the right, charge or interest which they respectively claim, and produce the documents, if any, on which they base their claims.

Schedule.

Dated this day of 189 .

(Signed)

Designation of Officer.

Seal (if the officer issuing the notice has an official seal).

Notes of Rulings.

Decree-holder purchasing not allowed set off if other judgment creditors.

It has been held that where there are competing decree-holders who have applied for execution of their decrees, section 294 of the Civil Procedure Code (Act X of 1877) must be taken as subject to the provisions of section 295, so that the decree-holder, who has been permitted under the former section to purchase the property in execution of his own decree, must share the proceeds of the sale rateably with such competing decree-holders, and will not be allowed to set off the purchase money against the amount due to him on his decree. I. L. R., 6 B., 571.)

The relation of the Collector executing the decree to the Court was previous to section 30 of Act VII of 1888, empowering the Local Government to confer certain judicial powers, defined as follows :—

Collector's functions not judicial.

Per West, J. :—The Collector, like the Názir in India, is a ministerial officer when he executes a decree. He, like the Názir, must carry out the decree of a Civil Court in general subjection to the judicial direction of the Court on whose authority the coercive power exercised by him rests and which alone can deal judicially with the questions that arise in execution. His proceedings and orders are subject accordingly to revision and correction on the application of a party aggrieved, whenever he misconceives the decree or acts illegally in giving effect to it. He is limited strictly to the precise line of activity laid down for him in the Code and the orders under it; and in cases of error or doubt it is the Court that must determine whether he, as its ministerial officer, has or has not transgressed his powers.

Per Birdwood, J. :—A sale made by a Collector under Chapter XIX of the Civil Procedure Code is subject to confirmation by the Civil Court under section 312. As soon as the Collector has exercised or performed the powers or duties conferred or imposed upon him by sections 321 to 325 of the Code, he is *functus officio*. If he has sold the property or re-sold it under the power given by Clause (*c*) of section 325, he has completed the execution of the decree so far as he can legally complete it, and it is then his duty to retransmit the decree to the Court, under rules prescribed in that behalf by Government under the second paragraph of section 320. Where the property has been sold or resold, the sale or resale cannot be set aside by the Collector. Any application for setting it aside must be made to the Civil Court under section 311, and dealt with by it under section 312, and if no application is made to the Court, the sale must be confirmed by it under that section.

Therefore when a Mámlatdár had put up immoveable property for sale and the sale had been confirmed by the Mámlatdár with the sanction of the Collector, and the auction purchaser had applied to the Collector for a certificate of sale which the Collector had refused, it was held that the Subordinate Judge who transferred the decree to the Collector for execution had jurisdiction to deal with an application against the refusal of the Collector to grant certificate and could revise the Collector's proceedings.

Collector cannot set sale aside after confirmation,

Held also, the Collector having through his subordinate put up for sale the judgment debtor's property and confirmed the sale had completely executed the decree so far as he could and was so far *functus officio*. His duty was to make a return to the Court of what he had done. After confirmation of the sale he could not set it aside. (I. L. R., 11 B., 478.)

(It would seem that when the powers of a Court under section 312, Civil Procedure Code, have not been conferred on the Collector under section 320 as amended by section 30 of VII of 1888, his position would still be as described in the above ruling).

or order payment by instalments if decree is for sale of property mortgaged,

A Collector, to whom a decree for sale of mortgaged property has been transferred for execution under section 320 of the Civil Procedure Code, is limited to one of the three course specified in section 321, and may not depart from them; much less may he do what the Court itself could not do in such a case, allow payment of the debt to be made by instalments.

delegates at his own risk.

A Collector, to whom decree has been so transferred for execution, acts ministerially and, when he delegates his functions to an assistant or Mámlatdár, incurs a risk of having to answer in damages to the person who is by any error or mistake deprived of the fruits of his judgment; and this risk attaches independently of malice or negligence. (I. L. R., 7 B., 332.)

The following will also apply when judicial powers have not been conferred on the Collector under section 320 as amended by section 30 of VII of 1888.

Court's powers in respect of decree transferred.

The Court that has made a decree or judicial order, which has been transmitted to the Collector for execution, is not deprived of the judicial powers with respect to it which may still at any particular time be competent to such Court, and which it would have had had the order been placed in the hands of its own ordinary officer, the Názir. In the exercise of such powers the Court has authority to re-call its own record transmitted to the Collector. (I. L. R., 7 B., 332.)

A ruling of the Allahabad High Court (I. L. R., 5 All., 315) seems to be somewhat in conflict with the above, but it should be remembered that the Collectors are bound to follow the decrees of the Court to which they are subordinate and are not at liberty to adopt a contrary opinion expressed by another High Court. (I. L. R., 10 C., 82.)